

Exhibit 2

to

Defendants Soliman H.S. Al-Buthi and Perouz Sedaghaty's
Response to Declaration of Michael Elsner

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

In Re Terrorist Attacks on September 11, 2001

MDL No. 1570

Thomas E. Burnett, Sr., *et al.*,

Plaintiffs,

v.

C.A. No. 03 CV 9849 (RCC)

Al Baraka Investment and Development
Corporation, *et al.*,

Defendants.

DECLARATION OF DAVID F. BERGER

I, David F. Berger, declare under penalty of perjury as follows:

1. I am an attorney admitted to practice in the States of Oregon and Washington, beginning in 1966, although currently inactive in Washington. I have also been admitted to practice before the U.S. District Courts for the District of Oregon, the Western District of Washington, and the Eastern District of Washington, as well as the U.S. Court of Appeals for the Ninth Circuit and the U.S. Supreme Court. I reside in Ashland, Jackson County, Oregon. I submit this declaration to provide the Court with further evidence concerning the business address of defendant Al Haramain Islamic Foundation, Inc. ("AHIF").

2. I first met Pete Seda, the resident director of AHIF, in his capacity as a commercial arborist in 1995. During the period 1996-99, I handled several legal matters for Pete Seda relating to his arborist business.

3. I was neither involved in, nor aware of, the acquisition of the headquarters property of

AHIF located at 3800 South Highway 99 in Jackson County, near Ashland, or the formation of AHIF as a nonprofit Oregon corporation. My first awareness of AHIF came from Pete in April, 1999, when I provided some legal counsel that same month. I continued to provide occasional legal counsel to Pete in a few business matters in 1999 and 2000, but did not handle any further matters for AHIF until August of 2001.

4. To the best of my recollection, I first visited the headquarters of AHIF on September 15, 2001. From the first time I ever provided any legal counsel to AHIF, its headquarters and business office has been located at 3800 South Highway 99 near Ashland. I have been in its office at that location many times, conferring with Pete and members of his family, as well as examining AHIF documents and records. For example, shortly following September 11, 2001, I met with Pete and two FBI officers at the AHIF headquarters. The meeting was at Pete's invitation, for the purpose of offering his assistance in any way possible to the FBI in its investigation of the events of September 11.

5. The principal building at 3800 South Highway 99 sits on a hillside, on a slope of about 20 degrees. Although it is described on Attachment "A" to Exhibit 2 of the Declaration of Michael E. Elsner as "a one story residential building," the main entrance is on the upper level, the lower level also has a separate entrance, a large garage, a large living facility, and a sizeable office containing the business equipment and principal records of AHIF. Behind the principal building, and further up the hillside, is a large tented prayer house. Pete often held educational programs in the prayer house for local high school and college classes, one of which I attended. In addition, the local Muslim community, including Muslim students at Southern Oregon University, used the prayer house on a regular basis. Ashland is a small college town, with a population of about 20,000. Pete was well known in the Ashland community, due to his position

as a spokesperson for the Muslim community, his role as a peace activist, and his participation in community events. In particular, Pete was widely recognized for his involvement with the annual and well-attended July Fourth parade, in which he and his camel were part of the parade. Pete's camel was kept in a high-visibility location in the pasture in front of the 3800 S. Highway 99 building, which is the main road out of town to the south, so that the location of his residence and AHIF's office was well known to the local community.

6. Immediately following the events of September 11, 2001, there arose some local and considerable national opposition to the Muslim religion. Pete informed me on a regular basis of threats and offensive incidents in and near the AHIF headquarters property, as well as at the private mailbox maintained by AHIF. Pete and I met with local law enforcement officials, both city and county, to relate these incidents and arrange for an expedited response in the event of an emergency. Eventually Pete had no choice but to close and lock the gate at the entrance to the property, for the safety and security of his family, and to protect their assets as well as those of AHIF. As opposition to Islam grew, members of the local Muslim community became increasingly fearful and reluctant to identify themselves as Muslims. Attendance at the prayer house declined steadily.

7. At about 8:20 on the morning of February 18, 2004, I received a telephone call from Jonah informing me that federal agents were at the AHIF headquarters property and had served him with a search warrant. Jonah requested my assistance, and I left immediately for the property. There I reviewed the search warrant, including the Affidavit in Support of an Application for Search Warrant, served on Jonah. As indicated on Attachment "B" to Exhibit 2 of the Elsner Declaration, the warrant identified "Entities Associated with Violations" as AHIF and "Al Haramain Riyadh." Although I was kept (and guarded) in one room of the building, I

counted at various times approximately 12-15 federal officers and agents searching the property, as well as several county officers guarding the property. I stayed until the search was completed at approximately two o'clock that afternoon. The government's affidavit in support of the search warrant specifically states that:

Documents provided by AHIF, Inc. to the IRS, as well as interviews conducted, indicate that 3800 S. Highway 99 was used by AHIF, Inc. to host prayer meetings and for the publication and distribution of Islamic books that deal with spiritual issues, including the distribution of Islamic books to prisoners. Information provided by AHIF, Inc.'s accountant shows 3800 S. Highway 99 appears to be the main facility in the U.S. in which AHIF, Inc. conducts its business activities.

See Affidavit in Support of an Application for Search Warrant, at ¶ 13 (Feb. 13, 2004) (excerpts attached and incorporated hereto as Attachment A).

8. Although I have not undertaken a survey of remaining AHIF records or equipment on the headquarters property at 3800 South Highway 99, at the conclusion of the search, the federal agents who conducted the search provided me with an eight-page "Inventory Listing of All Items Seized at Search Warrant Site". The inventory lists 41 boxes of equipment and records as "Seized Per Warrant".

9. To my knowledge, this property still remains the business office of AHIF. Entry to the business office may be obtained through me, or through Pete's son, Jonah.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 28th day of May, 2004.


DAVID F. BERGER

Attachment A

to

Declaration of David F. Berger

United States District CourtDISTRICT OF OREGON
FILED 04 FEB 13 10:30 AM

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In the Matter of the Search of

(Name, address or brief description of person, property or premises to be searched)

**One story residential building located at
3800 S. Highway 99 in Ashland, Oregon.**

APPLICATION AND AFFIDAVIT

CASE NUMBER: 04-4009-11

I, Colleen Anderson, being duly sworn depose and say:

I am a Special Agent, Internal Revenue Service, Criminal Investigation, and have reason to believe

Official Title

that _____ on the person of or XX on the property or premises known as (description):

3800 S. Highway 99 in Ashland, Oregon, further described in Attachment A,

in the District of Oregon; there is now concealed a certain person or property, namely:

fruits, evidence and instrumentalities of crimes against the United States, further described in Attachment B,

concerning a violation of Title 26, United States Code, Section(s) 7206(1) and Title 31, U.S.C. § 5324.

The facts to support a finding of Probable Cause are as follows:

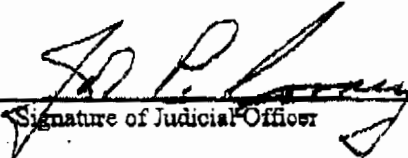
See Attached Affidavit of Special Agent Colleen Anderson incorporated by reference as if fully reset forth herein.

Continued on the attached sheet and made a part hereof.

☒ Yes☐ No

Signature of Affiant

Sworn to before me, and subscribed in my presence

2/13/04
Date

Signature of Judicial Officer

at Medford, Oregon
City and State

John P. Cooney, U.S. Magistrate Judge

Name and Title of Judicial Officer

**UNITED STATES DISTRICT COURT
DISTRICT OF OREGON**

In re: 3800 S. Highway 99
Ashland, OR 97520

) Affidavit in Support of an
) Application for Search Warrant

I, Colleen Anderson, being duly sworn, depose and say:

1. I am a Special Agent with the Internal Revenue Service - Criminal Investigation, assigned to the Medford, Oregon Post-of-Duty. As a Special Agent, I investigate possible violations of the Internal Revenue Code (Title 26, United States Code), the Money Laundering Control Act (Title 18, United States Code), and the Bank Secrecy Act (Title 31, United States Code).

2. This affidavit is in support of a search warrant application for 3800 S. Highway 99 in Ashland, Oregon. A detailed description of these premises is attached hereto and incorporated herein as Attachment A. The affidavit will show there is probable cause to believe criminal violations of Currency and Monetary Instrument reporting requirements and Internal Revenue Laws have been committed by two officers of the Al Haramain Islamic Foundation, Inc. in Ashland, Oregon and evidence of these violations, as detailed in Attachment B, attached hereto and incorporated herein, is presently located at 3800 S. Highway 99 in Ashland, Oregon.

3. I make this affidavit based on my participation in this joint investigation, as well as information I have received from other members of the joint investigation, including the Federal Bureau of Investigation (FBI), the U.S. Immigration and Customs Enforcement

appears to give ALBUTHE broad legal authority to act on the organization's behalf within the U.S. The document is signed by Aqueel Bin Abdel-Aziz Al-Aqueel, who I know was, until recently, the general manager of AHIF.

11. Jackson County Oregon Title company records show that, in December 1997, ALBUTHE purchased the property subject to this search warrant application at 3800 S. Highway 99 in Ashland, Oregon on behalf of the Al Haramain Islamic Foundation for approximately \$190,162.50. ALBUTHE'S bank records, Immigration Forms 94 (I-94's), and Currency Monetary Instrument Reports (CMIR's) show that between October and December of 1997, ALBUTHE brought into the U.S. from Saudi Arabia over \$206,000 in Visa Traveler's checks issued by the Al Rajhi Bank in Saudi Arabia, which he used to purchase 3800 S. Highway 99 in Ashland, Oregon.

12. I have observed the building located at 3800 S. Highway 99 in Ashland, Oregon and reviewed Jackson County Assessors records pertaining to the location. Based on Jackson County Assessors records, I know that 3800 S. Highway 99 is a one story residence built in 1973 with a basement and garage on the bottom level and a total of 4,157 livable square feet.

13. Documents provided by AHIF, Inc. to the IRS, as well as interviews conducted, indicate that 3800 S. Highway 99 was used by AHIF, Inc. to host prayer meetings and for the publication and distribution of Islamic books that deal with spiritual issues, including the distribution of Islamic books to prisoners. Information provided by AHIF, Inc.'s accountant shows 3800 S. Highway 99 appears to be the main facility in the U.S. in which AHIF, Inc. conducts its business activities. Information obtained from individuals familiar with the location indicates that SEDA also used 3800 S. Highway 99 as

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